

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION

MARY CUNNINGHAM, Individually	*	
and as Personal Representative of the	*	
Estate of Gordon Cunningham,	*	CIVIL ACTION
	*	FILE NO: 2:20-CV-00131-RWS
Plaintiff,	*	
	*	
v.	*	
	*	
INGLES MARKETS, INC., and	*	
GRAND RAPIDS CHAIR COMPANY,	*	
	*	
Defendants.	*	

**DEFENDANT INGLES MARKETS, INC.'S**  
**INITIAL DISCLOSURES**

(1) If the Defendant is improperly identified, state Defendant's correct identification and state whether Defendant will accept service of an amended summons and complaint reflecting the information furnished in this disclosure response.

**Disclosure:** Ingles Markets, Inc. makes no contention that it is not properly identified and therefore no additional service of the summons or Complaint is necessary as to this Defendant.

(2) Provide the names of any parties whom Defendant contends are necessary parties, but who have not been named by Plaintiff. If Defendant

contends that there is a question of misjoinder of parties, provide the reasons for the Defendant's contentions.

**Disclosure:** At this time, Ingles does not contend that there are other necessary parties to this action. Ingles does state that the table at issue was purchased by Ingles from Hefco, Inc. in 2012.

(3) Provide a detailed factual basis for the defense or defenses and any counterclaims or crossclaims asserted by Defendant in the responsive pleading.

**Disclosure:** Ingles has not asserted in counterclaims or crossclaims. Ingles purchased the table at issue and other tables from Hefco Inc. in 2012. The tables have been in continuous use in the café at the Jasper store since 2012 and there have been no other incidents of the tables overturning. The incident at issue occurred because the Plaintiff's decedent placed his body weight on the corner of the table to stand up, which is not the purpose of the table. Ingles incorporates the defenses set forth in its Answer to Plaintiff's Complaint. Other factual bases for the Defendant's defenses will be developed through discovery.

(4) Describe in detail all statutes, codes, regulations, legal principles, standards and customs or usages, and illustrative case law which Defendants contend are applicable to this action.

**Disclosure:** Discovery into the facts and circumstances of this case is just beginning. Defendant contends that O.C.G.A. § 51-3-1 and related Georgia case law, comparative negligence, and the assumption of the risk may be applicable to this action.

(5) Provide the name and, if known, the address and telephone number of each individual likely to have discoverable information that you may use to support your claims or defenses, unless solely for impeachment, identifying the subjects of the information (Attach witness list to Initial Disclosures as Attachment A.)

**Disclosure:** See Attachment A.

(6) Provide the name of any person who may be used at trial to present evidence under rules 702, 703, or 705 of the Federal Rules of Evidence. For all experts described in Fed.R.Civ.P. 26(a)(2)(B), provide a separate written report satisfying the provisions of that rule. (Attach expert witness list and written reports to Initial Disclosures as Attachment B.)

**Disclosure:** None at this time. The Defendant will supplement as experts are identified.

(7) Provide a copy of, or description by category and location of, all documents, data compilations, and tangible things in your possession, custody, or

control that you may use to support your claims or defenses unless solely for impeachment, identifying the subjects of the information. (Attach document list and descriptions to Initial Disclosures as Attachment C.)

**Disclosure:** See Attachment C.

(8) In the space provided below, provide a computation of any category of damages claimed by you. In addition, include a copy of, or describe by category and location of, the documents or other evidentiary material, not privileged or protected from disclosure on which such computation is based, including materials bearing on the nature and extent of injuries suffered, making such documents or evidentiary material available for inspection and copying under Fed.R.Civ.P. 34. (Attach any copies and descriptions to Initial Disclosures as Attachment D.)

**Disclosure:** Ingles is not seeking any damages from the Plaintiff in this case.

(9) If Defendant contends that some other person or legal entity is, in whole or in part, liable to the Plaintiff or Defendant in this matter, state the full name, address and telephone number of such person or entity and describe in detail the basis of such liability.

**Disclosure:** At this point, the Defendant lacks sufficient information surrounding the purchase of the product and the events surrounding the incident to

identify any other parties that may be at fault for the incident. The Defendant will supplement this information during discovery.

(10) Attach for inspection and copying as under Fed.R.Civ.P. 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments to satisfy the judgment. (Attach copy of insurance agreement to Initial Disclosures as Attachment E.)

**Disclosure:** See Attachment E.

This 17<sup>th</sup> day of July, 2020.

**MABRY & McCLELLAND, LLP**

By: /s/ James W. Scarbrough  
James W. Scarbrough  
Georgia Bar No. 628328  
Amy M. Buzby  
Georgia Bar No. 331349  
Attorneys for Defendant Ingles Markets, Inc.

**ATTACHMENT “A”**

**Defendant Ingles Market’s Witness list**

1. Hank Postell, co-manager. Mr. Postell may be contacted through the Defendant’s attorney.
2. Teresa Holcomb. Ms. Holcomb may be contacted through the Defendant’s attorney;
3. David Waters. Mr. Waters may be contacted through the Defendant’s attorney;
4. Denise Williams. Ms. Willilams may be contacted through the Defendant’s attorney.
5. Medical providers of Gordon Cunningham, whose identity are unknown to this Defendant.
6. Plaintiff Mary Cunningham.

Defendant reserves the right to supplement this list during the course of discovery and/or prior to the entry of a pre-trial order in this case as permitted under Local Rule 16.4.

**ATTACHMENT “B”**

None at this time. The Defendant will supplement as experts are identified.

**ATTACHMENT “C”**

1. Customer Incident Occurrence Report;
2. Incident Occurrence Statement by David Waters;
3. Incident Occurrence Statement by Teresa Holcomb;
4. Incident Occurrence Statement by Denise Williams;
5. Store Hazard Recognition Policy;
6. Store Sweep Log;
7. Photographs of table;
8. Photographs of café;
9. Video of decedent in the store;

These documents are being mailed to counsel.

Defendant reserves the right to supplement this list during the course of discovery.



**ATTACHMENT “D”**

None.

**ATTACHMENT “E”**

- (1) Ingles Markets, Inc. is self-insured to \$500,000.
- (2) Travelers Property Casualty Company of America policy covers from \$500,000 to \$1 million, a copy of the declarations page is being provided to counsel;
- (3) Endurance Risk Solutions Assurance Co. policy covers from \$1 million to \$25 million, a copy of the declarations page is being provided to counsel.

**CERTIFICATION OF COUNSEL WITH LOCAL RULE 5.1C**

The undersigned pursuant to the Court's Local Rules of the Northern District of Georgia, hereby certifies that this document has been prepared with Times New Roman 14 point.

This 17<sup>th</sup> day of July, 2020.

/s/ James W. Scarbrough

James W. Scarbrough

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served a copy of the within and foregoing pleading upon opposing counsel of record by depositing said copy in the United States Mail, in a properly addressed envelope, with adequate postage affixed thereon, to:

Mr. Steven Leibel  
Mr. Paul Menair  
STEVEN LEIBEL, PC  
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Counsel for GRAND RAPIDS CHAIR CO.

This 17<sup>th</sup> day of July, 2020.

/s/ James W. Scarbrough  
James W. Scarbrough